

§ 1.67

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be effective as a final order of the Commission fifteen days after the date it is served upon the floor trader in accordance with the provisions of § 3.50(a) of this chapter unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (c)(5)(ii) of this section.

(6) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (c)(5)(i) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b) through (j) of this chapter.

[58 FR 19589, Apr. 15, 1993; 58 FR 21776, Apr. 23, 1993, as amended at 60 FR 54801, Oct. 26, 1995; 67 FR 62351, Oct. 7, 2002]

§ 1.67 Notification of final disciplinary action involving financial harm to a customer.

(a) *Definitions.* For purposes of this section:

(1) *Final disciplinary action* means any decision by or settlement with a contract market in a disciplinary matter which cannot be further appealed at the contract market, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction.

(2) [Reserved]

(b) Upon any final disciplinary action in which a contract market finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer:

(1)(i) the contract market shall promptly provide written notice of the disciplinary action to the futures commission merchant that cleared the transaction; and,

(ii) a futures commission merchant that receives a notice, under paragraph (b)(1)(i) of this section shall promptly provide written notice of the disciplinary action to the customer as disclosed on its books and records. If the customer is another futures commission merchant, such futures commis-

sion merchant shall promptly provide the notice to the customer.

(2) A written notice required by paragraph (b)(1) of this section must include the principal facts of the disciplinary action and a statement that the contract market has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer. For the purposes of this paragraph, a notice which includes the information listed in § 9.11(b) shall be deemed to include the principal facts of the disciplinary action thereof.

[58 FR 37655, July 13, 1993]

§ 1.68 Customer election not to have funds, carried by a futures commission merchant for trading on a registered derivatives transaction execution facility, separately accounted for and segregated.

(a) A futures commission merchant shall not separately account for and segregate, in accordance with the provisions of section 4d of the Act and §§ 1.20–1.30, 1.32 and 1.36, funds received from a customer if:

(1) The customer is an eligible contract participant as defined in section 1a(12) of the Act;

(2) The customer's funds are being carried by the futures commission merchant for the purpose of trading on or through the facilities of a derivatives transaction execution facility registered under section 5a(c) of the Act;

(3) The registered derivatives transaction execution facility has authorized, in accordance with § 37.7 of this chapter, futures commission merchants to offer eligible contract participants the right to elect not to have funds that are being carried for purposes of trading on or through the facilities of the registered derivatives transaction execution facility, separately accounted for and segregated by the futures commission merchant; and

(4) The futures commission merchant and the customer have entered into a written agreement, signed by a person with the authority to bind the customer, in which the customer:

(i) Represents and warrants that the customer is an eligible contract participant as defined in section 1a(12) of the Act;

(ii) Elects not to have its funds separately accounted for and segregated in accordance with the provisions of section 4d of the Act and §§ 1.20–1.30, 1.32 and 1.36 with respect to agreements, contracts or transactions traded on or subject to the rules of any registered derivatives transaction execution facility that has authorized such treatment in accordance with § 37.7 of this chapter;

(iii) Acknowledges that it has been informed, and by making this election agrees that:

(A) The customer's funds, related to agreements, contracts or transactions on any registered derivatives transaction execution facility that authorizes the opting out of segregation will not be segregated from the funds of the futures commission merchant in accordance with the provisions of section 4d of the Act and §§ 1.20–1.30, 1.32 and 1.36;

(B) The futures commission merchant may use such funds in the course of the futures commission merchant's business without the prior consent of the customer or any third party;

(C) In the event the futures commission merchant files, or has a petition filed against it, for bankruptcy, the customer, as to those funds that the customer has elected not to have separately accounted for and segregated by the futures commission merchant in accordance with the provisions of section 4d of the Act and §§ 1.20–1.30, 1.32 and 1.36, will not be entitled to the priority for customer claims provided for under the Bankruptcy Code and part 190 of this chapter;

(D) The customer may not retain a security interest in assets excluded from segregation in accordance with this section;

(E) The customer may not enter into any agreement or other understanding with the futures commission merchant relating to the manner in which the customer's assets will be held at the futures commission merchant, that directly or indirectly gives the customer a priority in bankruptcy that is equal or superior to the priority afforded

public customers under the Bankruptcy Code and part 190 of this chapter; and

(iv) Acknowledges that the agreement shall remain in effect unless and until the customer abrogates the agreement in accordance with paragraph (c) of this section.

(b) In no event may money, securities or property representing those funds that customers have elected not to have separately accounted for and segregated by the futures commission merchant, in accordance with this section, be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and §§ 1.20–1.30, 1.32 and 1.36.

(c)(1) A customer that has entered into an agreement in accordance with paragraph (a)(4) of this section may abrogate that agreement by so informing the futures commission merchant in writing, signed by a person with the authority to bind the customer. The effective date of the abrogation shall not exceed five business days from the futures commission merchant's receipt of the customer's abrogation. The abrogation shall not become effective if the futures commission merchant files, or has had filed against it, a petition for bankruptcy prior to the effective date of the abrogation.

(2) Upon the effective date of the abrogation, permitted under paragraph (c)(1) of this section, provided that the customer's positions in the non-segregated account are fully margined and the customer is not in default with respect to any of its obligations to the futures commission merchant arising out of agreements, contracts or transactions entered on, or subject to the rules of, a registered entity, as defined in section 1a(29) of the Act, the futures commission merchant shall transfer to a customer segregated account:

(i) All trades or positions of the customer with respect to which the customer had previously elected to opt out of segregation; and

(ii) All money, securities, or property held in such account to margin, guarantee or secure such trades or positions.

(d) Each futures commission merchant shall maintain any agreements entered into with customers pursuant to paragraph (a) of this section and any abrogations of such agreements, made pursuant to paragraph (c) of this section, in accordance with § 1.31.

[66 FR 20744, Apr. 25, 2001]

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

(a) *Definitions.* For purposes of this section:

(1) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the self-regulatory organization except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.

(2) *Family relationship* of a person means the person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) *Governing board* means a self-regulatory organization's board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof, duly authorized, pursuant to a rule of the self-regulatory organization that has been approved by the Commission or has become effective pursuant to either Section 5a(a)(12)(A) or 17(j) of the Act to take action or to recommend the taking of action on behalf of the self-regulatory organization.

(4) *Oversight panel* means any panel, or any subcommittee thereof, authorized by a self-regulatory organization to recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance,

compliance, rule enforcement, or disciplinary responsibilities.

(5) *Member's affiliated firm* is a firm in which the member is a "principal," as defined in § 3.1(a), or an employee.

(6) *Named party in interest* means a person or entity that is identified by name as a subject of any matter being considered by a governing board, disciplinary committee, or oversight panel.

(7) *Self-regulatory organization* means a "self-regulatory organization" as defined in § 1.3(ee) and includes a "clearing organization" as defined in § 1.3(d), but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

(8) *Significant action* includes any of the following types of self-regulatory organization actions or rule changes that can be implemented without the Commission's prior approval:

(i) Any actions or rule changes which address an "emergency" as defined in § 1.41(a)(4)(i) through (iv) and (vi) through (viii); and,

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at such self-regulatory organization; but does not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any contract traded at such self-regulatory organization.

(b) *Self-regulatory organization rules.* Each self-regulatory organization shall maintain in effect rules that have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to Section 17(j) of the Act, to address the avoidance of conflicts of interest in the execution of its self-regulatory functions. Such rules must provide for the following:

(1) *Relationship with named party in interest*—(i) *Nature of relationship.* A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations